


*Lodged Proposed Order*

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY: 

FILED

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANITA WHITE, et al.,

Plaintiffs,

vs.

EDEBITPAY, L.L.C., et al.,

Defendants.

) Case No. : 2:11-cv-06738-CBM-FFM

)  
) **NOTICE OF MOTION AND**  
) **MOTION OF FEDERAL TRADE**  
) **COMMISSION FOR LEAVE TO**  
) **FILE BRIEF AS AMICUS CURIAE**

) Date: September 9, 2013

) Time: 11:00 a.m.

) Judge: Hon. Consuelo B. Marshall

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Please take notice that on September 9, 2013, or as soon thereafter as  
 3  
 4 counsel may be heard by the Court, the Federal Trade Commission ("FTC") will  
 5 and hereby does move the Court for leave to file the attached brief as *Amicus*  
 6 *Curiae*.<sup>1</sup> The FTC – one of the nation's chief consumer protection agencies – has a  
 7  
 8 broad mandate to prevent "unfair or deceptive acts or practices in or affecting  
 9 commerce." 15 U.S.C. § 45 (a). As part of its mission, the FTC seeks to halt  
 10 deceptive marketing and unauthorized billing. The Commission has brought many  
 11 cases against companies who deceptively market their products or bill consumers  
 12 without authorization.<sup>2</sup> The FTC thus has considerable expertise in issues related  
 13 to unauthorized billing and deceptive marketing that may be useful to this Court in  
 14 evaluating whether the settlement in this case is fair, reasonable, and adequate.  
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17 The FTC has also studied how to best protect consumer interests in the class  
 18 action context and has a tradition of filing *amicus* briefs commenting on potentially  
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23 <sup>1</sup> The FTC makes this motion following the FTC's conference with attorneys for  
 24 Plaintiffs on August 5, 6, and 7, and following the FTC's conference with counsel  
 for Defendants on August 5.

25 <sup>2</sup> See e.g., *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff'd*  
 26 475 Fed. App'x 106 (9th Cir. 2012); Stipulated Order, *FTC v. Nationwide*  
 27 *Connections and BSG Clearing Solutions*, No. 06- 80180 (S.D. Fla. Sept. 18,  
 28 2008); Stipulated Order, *FTC v. Websource Media, LLC*, No. H-06-1980 (S.D.  
 Tex. July 17, 2007).

1 unfair class settlements.<sup>3</sup> Importantly, the FTC represents the public interest, in  
2 contrast to the parties to this litigation, who represent their own interests. The  
3 distinction between public and private interests – and its implications for aiding the  
4 court – is evidenced, *inter alia*, by the fact that in the courts of appeals, where  
5 *amicus* briefs are routinely filed, a United States agency like the Commission may  
6 file an *amicus curiae* brief as a matter of right, whereas non-government *amicus*  
7 *curiae* are required to obtain either consent of the parties or leave of the court. *See*  
8 FRAP Rule 29. Moreover, as outlined in the FTC's brief, the settlement has  
9 serious implications for consumers that the parties have not addressed, including  
10 the fact that the settlement would extinguish tens of millions of dollars in claims  
11 against the defendants for a mere \$1 million payment, virtually none of which will  
12 go to class members. The settlement's notice process is also fundamentally  
13 flawed, as it relies primarily on sending inadequate notices to addresses obtained  
14 from outdated records.  
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22 <sup>3</sup> For example, the FTC recently filed a brief in *Moore v. Verizon Communications,*  
23 *Inc., et al.* *See* FTC's Brief as *Amicus Curiae, Moore v. Verizon Communications,*  
24 *Inc., et al.*, CV-09-1823 SBA (N.D. Cal. Aug. 17, 2012), available at  
25 <http://www.ftc.gov/os/2012/08/120817mooreverizonamicusbrief.pdf>. The FTC  
26 also filed a brief as *amicus curiae, Vassalle v. Midland Funding*, 3:11-cv-00096  
27 (N.D. Oh. June 11, 2011), available at  
28 <http://www.ftc.gov/os/2011/06/110621midlandfunding.pdf> (challenging, among  
other things, a broad release of claims). For a list of additional *amicus* filings, see  
<http://www.ftc.gov/bcp/workshops/classaction/index.shtm>.

1 The FTC's focus on consumer welfare, objectivity, and subject matter  
2 expertise make it uniquely situated to comment on the settlement in this case. *See*  
3 *e.g., Congregation Etz Chaim v. City of Los Angeles*, No. CV-97-5042 CAS  
4 (EX), 2009 WL 1293257, at \*5 (C.D. Cal. May 5, 2009) ("an individual or  
5 organization seeking to participate as *amicus curiae* must 'make a showing that his  
6 participation is useful to or otherwise desirable to the court'"); *Woodfin Suite*  
7 *Hotels, LLC v. City of Emeryville*, No. C-06-1254, 2007 WL 81911, at \*3 (N.D.  
8 Cal. Jan. 9, 2007) (explaining that "an individual seeking to appear as amicus must  
9 merely make a showing that his participation is useful or otherwise desirable to the  
10 court") (internal citations and quotations omitted); *Sonoma Falls Developers, LLC*  
11 *v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003)  
12 (explaining that amicus status may be granted "concerning legal issues that have  
13 potential ramifications beyond the parties directly involved or if the amicus has  
14 'unique information or perspective that can help the court beyond the help that  
15 lawyers for the parties are able to provide.'") (internal citations omitted); *cf. In re*  
16 *Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (granting amicus  
17 status to a government agency where, among other things, agency had oversight  
18 authority of act being interpreted). Accordingly, the court should grant the FTC  
19 amicus status.<sup>4</sup>

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27 <sup>4</sup> The FTC also requests the Court allow it to appear at the Final Approval Hearing.  
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1 Dated: August 9, 2013

2 Respectfully submitted,

3 *Thomas C. Goodhue*  
4 /s/ Thomas C. Goodhue

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**CERTIFICATE OF SERVICE**

On August 9, 2013, I served a copy of the foregoing on the parties listed below via United States First Class Mail:

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13 Dated: August 9, 2013

14 /s/ Thomas C. Goodhue